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APR 2

No. 727

In the Supreme Court of the United States

OCTOBER TERM, 1935

BIBB GRAVES, AS GOVERNOR OF THE STATE OF ALABAMA, ET AL., ETC., APPELLANTS

v.

THE TEXAS COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

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OPINION BELOW

The opinion of the United States District Court for the Middle District of Alabama, Northern Division (R. 226–239), is not yet officially reported.

JURISDICTION

The decree of the District Court was entered on December 7, 1935 (R. 224–225), enjoining appellants from collecting the state gasoline tax with respect to sales to the United States. The court

was composed of three Judges, one being a Judge of the United States Circuit Court of Appeals for the Fifth Circuit, and an appeal to this Court was allowed on January 3, 1936, in accordance with the provisions of Sections 238 and 266 of the Judicial Code, as amended (U. S. C., Title 28, Secs. 345 and 380).

QUESTION PRESENTED

Whether officials of the State of Alabama, purporting to act in conformity with authority conferred upon them by the statutes of the State, were erroneously enjoined from imposing and collecting the state excise tax of 6¢ a gallon with respect to gasoline sold to the United States.

STATUTES INVOLVED

These will be found in the Appendix, *infra*, pp. 23–33.

STATEMENT

This brief is submitted on behalf of the United States as *Amicus Curiae*. The interest of the Federal Government in the controversy lies in the fact that a decision sustaining the right of the appellants to the tax would greatly increase the cost of gasoline in Alabama to the United States. On the basis of purchases during the current year, it is estimated that the annual added cost of gasoline would amount to $143,145.54.[1]

[1] Figured by multiplying estimated purchases of current fiscal year in Alabama, 2,385,759 gallons, by present rate of tax sought to be imposed.

Moreover, it is noted that the provisions of the Alabama statutes imposing an excise tax on lubricating oils are similar to the provisions in the statute imposing the tax on gasoline. Then, too, certain counties and cities of the State levy excise taxes upon gasoline, ranging from 1¢ to 3¢ per gallon. Also, if Alabama succeeds in collecting the excise tax herein, a further consideration is the probability that other States will modify their statutes to produce a similar revenue. Such action, it is estimated, would result in an added burden upon the United States amounting to $4,479,661.40 per year.[2]

The use of fuel oil by the Navy Department, which purchased 273,354,228 gallons in 1934, suggests a further source of added revenue to the States and of added expense to the Federal Government, if the validity of this type of legislation be sustained.

The first statute of Alabama imposing a gasoline excise tax was approved February 10, 1923 (R. 2), providing for a tax of 2¢ per gallon upon persons engaged in the sale of this commodity. On January 25, 1927, the tax was increased to 4¢ per gallon. (R. 22–26.) On August 27, 1927, the 1923 Act was materially revised. (R. 3–8.) A further amendment (R. 8, 9) was approved on July 15,

[2] Figured by multiplying estimated purchases of current fiscal year in the United States, 111,991,535 gallons, by an average tax rate of 4¢ per gallon.

1931, relating to the distribution of the proceeds of the tax.

On July 27, 1931, the tax was increased to 5¢ per gallon. (R. 26–31.) Another increase on November 5, 1932 (R. 31–37) brought the tax rate up to 6¢ per gallon. The statutes of July 27, 1931 and November 5, 1932, were repealed on January 31, 1935, but a revised statute (R. 37–44) was enacted providing for a continuation of the tax at the 6¢ level.

On July 10, 1935, the provisions of former laws were consolidated in one statute (see Appendix, *infra,* pp. 29–33, R. 44–45), which imposed a tax of 6¢ per gallon upon all persons selling, distributing, storing, or withdrawing gasoline from storage for any use. The Act provided, however, that sales of gasoline in interstate commerce should be exempt. It was provided that the tax should be imposed only once and that payment by persons selling might be made upon the basis of sales.

Existing contracts between the Texas Company and the United States (R. 145–221) which will expire shortly, provide that the sale price of gasoline shall not include any state excise tax.

Sales to the United States are made principally from plaintiff company's Mobile terminal and bulk stations, but deliveries are also made through retail service stations. (R. 128.) Proceeding under an opinion of a former Attorney General of the State of Alabama, addressed to the State Tax Com-

mission in a letter dated August 22, 1928 (R. 54–58), to the effect that motor vehicle fuels sold to the United States were exempt from taxation under Alabama statutes, the Texas Company has not paid a tax upon gasoline sold to the Federal Government since 1928.

On June 17, 1935, a telegram (R. 12–13) was sent by the State Tax Commission to the Texas Company, demanding payment of the state excise tax plus interest and penalty on 1,300,000 gallons of gasoline withdrawn from storage for sale to the United States. On July 5, 1935, the Attorney General of the State of Alabama rendered an opinion (R. 59–69) to the State Tax Commission, holding that all persons engaged in the business of selling, distributing, or storing gasoline must pay the state excise tax, whether or not purchased by the United States. On August 30, 1935, the State Tax Commission advised the Texas Company by letter (R. 13–14) that it was not entitled to exemption on gasoline sold to the United States or Federal agencies.

The decision of the lower court was based upon an agreed statement of facts (R. 110–221), which recited among other things that the appellants intended to collect or attempt to collect the tax unless restrained by judicial order.

The appeal will be considered in this brief only on the assumption that an injunction is an appropriate remedy under the particular circumstances

of this case. Similarly, the United States is not interested in any question concerning past transactions or whether appellants are estopped from recovering the tax on sales already made, since there appears no logical basis whereby the burden of the tax on gasoline previously sold might be shifted to the Federal Government.

SUMMARY OF ARGUMENT

That the Federal Government is immune from taxation by the States is a fundamental concept of our constitutional system of dual governments that has been uniformly recognized. The immunity extends to every appropriate agency for a governmental purpose. In determining whether a state statute imposing taxes is an encroachment upon the immunity of the United States, the practical effect of the law in operation as applied and enforced by the State controls.

The Alabama excise tax upon gasoline operates as a sales tax, the burden of which is shifted to the consumer, being measured by the number of gallons sold or withdrawn for use. The collection of the tax with respect to gasoline sold to the United States would retard, impede and burden the Federal Government in the exercise of its constitutional powers. It is therefore unconstitutional, and it is immaterial whether the tax be described as a sales tax, a privilege tax or a property tax.

ARGUMENT

I

THE FEDERAL GOVERNMENT IS IMMUNE FROM TAXATION BY THE STATES

The sole question in the present litigation in which the Federal Government is interested is whether the long established and fundamental principle of constitutional law which has grown up with our system of dual governments, involving the relations between the sovereignties of the United States and of the States, whereby the one refrains from interference with the other in the recognized orbits of their respective constitutional powers, shall be continued.

Taxation by the States of the instrumentalities of the Federal Government, engaged in public and governmental functions, has been recognized as inconsistent with our system of government, as shown by a long line of decisions from the earliest days of the Republic. As stated in *McCulloch* v. *Maryland,* 4 Wheat. 316, 435:

> * * * the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.

The principle was applied in *Weston* v. *City Council of Charleston,* 2 Pet. 448, in an opinion

handed down by Chief Justice Marshall, which stated (p. 468):

> The right to tax the contract to any extent, when made, must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government; to any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely.

A further recognition of the doctrine is found in *United States* v. *Railroad Co.*, 17 Wall. 322, denying the right of the United States to tax the interest from railroad bonds owned by the City of Baltimore. It is there stated (pp. 327–328):

> The right of the States to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other.

More recently, the doctrine of immunity is discussed in *Clallam County* v. *United States,* 263 U. S. 341, in which Justice Holmes commented as follows (p. 344):

> The immunity is claimed under the Constitution of the United States. It is true that no specific words forbid the tax, but the prohibition established by *McCulloch* vs. *Maryland,* 4 Wheat. 316, was established on the ground that the power to tax assumed by the State was in its nature "repugnant to the constitutional laws of the Union" and therefore was one that under the Constitution the State could not use. * * * The immunity is derived from the Constitution in the same sense and upon the same principle that it would be if expressed in so many words.

Also, the following excerpt from *Macallen Co.* v. *Massachusetts,* 279 U. S. 620, is worthy of note (p. 628):

> Not only may the power to tax be exercised oppressively, but for one government—state or national—to lay a tax upon the instrumentalities or securities of the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority.

In *Indian Motocycle Co.* v. *United States,* 283 U. S. 570, in connection with the attempt by the United States to tax the purchase price of motorcycles bought by a municipal corporation for its

police department, the opinion of Justice Van Devanter said (p. 575):

> It is an established principle of our constitutional system of dual government that the instrumentalities, means and operations whereby the United States exercises its governmental powers are exempt from taxation by the States, and that the instrumentalities, means and operations whereby the States exert the governmental powers belonging to them are equally exempt from taxation by the United States. * * * Where the principle applies it is not affected by the amount of the particular tax or the extent of the resulting interference, but is absolute.

A succinct statement of the doctrine may be found in the opinion by Chief Justice Hughes in *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 128:

> The principle of the immunity from state taxation of instrumentalities of the Federal Government, and of the corresponding immunity of state instrumentalities from Federal taxation—essential to the maintenance of our dual system—has its inherent limitations. It is aimed at the protection of the operations of government (*McCulloch* v. *Maryland*, 4 Wheat. 316, 436), and the immunity does not extend "to anything lying outside or beyond governmental functions and their exertions." *Indian Motocycle Co.* v. *United States*, 283 U. S. 570, 576, 579. Where the immunity exists, it is absolute, resting upon an "entire absence of power" (*Johnson* v. *Maryland*, 254 U. S. 51, 55, 56),

> but it does not exist "where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government." *Willcuts* v. *Bunn*, 282 U. S. 216, 225.

The decision in *Indian Motocycle Co.* v. *United States, supra,* is cited as authority in *Trinityfarm* v. *Grosjean,* 291 U. S. 466, 471:

> Its application does not depend upon the the amount of the exaction, the weight of the burden or the extent of the resulting interference with sovereign independence. Where it applies, the principle is an absolute one wholly unaffected by matters or distinctions of degree. *Indian Motocycle Co.* v. *United States,* 283 U. S. 570, 575, and cases cited. Its right application is essential to the orderly conduct of the national and the state governments and the attainment of justice as between them.

Illustrations of the application of the doctrine of immunity are numerous, but it is believed that further citations would be superfluous.

II

WHETHER A STATE STATUTE CONSTITUTES AN ENCROACHMENT UPON THE IMMUNITY OF THE UNITED STATES IS TO BE DETERMINED FROM THE PRACTICAL EFFECT OF THE LAW IN OPERATION

Appellants urge that Alabama statutes impose a tax upon designated persons for the privilege of storing gasoline, measured by the number of gal-

lons withdrawn from storage. It is alleged that the tax accrues upon withdrawal of the gasoline. In other words, appellants contend that it is an occupational tax.

In *Gregg Dyeing Co.* v. *Query*, 286 U. S. 472, a case involving a tax upon the storage of gasoline, Chief Justice Hughes stated (p. 476):

> In maintaining rights asserted under the Federal Constitution, the decision of this Court is not dependent upon the form of a taxing scheme, or upon the characterization of it by the state court. We regard the substance rather than the form, and the controlling test is found in the operation and effect of the statute as applied and enforced by the State. *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, 362; *Hanover Fire Ins. Co.* v. *Harding*, 272 U. S. 494, 509, 510.

A transportation tax, measured by transportation charges, was deemed from the practical effect of the law in operation, a tax upon the vendor, since the property was shipped at his risk, in *Wheeler Lumber Co.* v. *United States*, 281 U. S. 572.

Consistent with this decision may be noted those involving telegrams, such as *Telegraph Co.* v. *Texas*, 105 U. S. 460, which held that a state tax upon telegrams was unconstitutional with respect to messages sent by the United States. To the same effect, see *Postal Telegraph Cable Co.* v. *Charleston*, 153 U. S. 692, and *Williams* v. *City of Talladega*, 226 U. S. 404.

In *Fox Film Corp.* v. *Doyal, supra* (p. 126), a tax laid "upon the privilege of engaging in certain occupations", measured by the gross receipts from the licensing of copyrighted motion pictures, although sustained because copyrights are not Federal instrumentalities, was held to be a direct charge on the royalties,

Justice Roberts, in *Stewart Dry Goods Co.* v. *Lewis,* 294 U. S. 550, stated (p. 555):

> In resolving the issue we are not concluded by the name or description of the tax as found in the act; our duty is to ascertain its nature and effect. "The substance and not the shadow determines the validity of the exercise of the power."

In *Dawson* v. *Kentucky Distilleries Co.,* 255 U. S. 288, the Court disregarded the designation by the State and held that a tax of 50¢ per gallon on whiskey, although described as an annual license tax upon persons engaged in the business of owning and storing whiskey, was essentially a property tax.

III

THE ALABAMA EXCISE TAX UPON GASOLINE IS IN FACT A SALES TAX, THE BURDEN OF WHICH IS SHIFTED TO THE CONSUMER

Since the United States is immune from taxation by the States, and the constitutionality of tax statutes is determined by their practical effect in operation, we come then to the crux of the controversy, namely, what is the practical effect of the Alabama

excise tax. The appellants argue from the phraseology of the statutes that it is an occupational tax imposed for the privilege of storing gasoline. We submit that, considering the practical effect of the tax, as enforced and applied by the State, it is a sales tax.

That an excise tax is unconstitutional and void as applied to sales of gasoline to the United States is decided in *Panhandle Oil Co.* v. *Knox,* 277 U. S. 218. An extract from the opinion of Justice Butler in that case states (p. 222):

> To use the number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. * * * And that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State.
>
> The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect of such purchases remain untrammeled.

Upon the authority of that case, the Supreme Court of the State of Texas was reversed in *Graysburg Oil Co.* v. *Texas,* 278 U. S. 582, in a *per curiam* decision.

It is not disputed that the Alabama tax is measured by the number of gallons of gasoline withdrawn from storage for sale or use. However, the storage of any particular gasoline may continue indefinitely and the storer incures no tax liability.

Gasoline may be withdrawn from storage and placed in storage in another locality within the State and no tax accrues. No liability for the tax attaches with respect to gasoline which evaporates, is stolen, or destroyed, regardless of the fact that it may have been stored and withdrawn from storage. It is specifically provided that any particular gasoline is subject to the tax but once, even though it may have been stored many times and by different distributors or dealers. Persons who sell the commodity are permitted to pay the tax upon the basis of sales.

Further support for our contention that Alabama is attempting in reality to tax the sale or use and not the occupation, is found in the provision which exempts gasoline used in interstate commerce. If the tax is primarily levied for the privilege of storing the commodity, it is difficult to understand why the *use* is the basis for granting an exemption. The practical effect of deferring payment of the tax until the time of sale or withdrawal for use, results in the administration of the law as a sales tax.

That the burden of the Alabama tax falls upon the consumer, which was the chief objection to the sales tax in *Panhandle Oil Co.* v. *Knox, supra,* is not open to question. By the method of measuring the tax, of collecting it but once, and then only upon gasoline sold or used, the burden of the tax is shifted in its entirety to the purchaser or user. The impossibility of dealers or distributors absorbing the tax is obvious.

In *Gregg Dyeing Co.* v. *Query, supra,* this Court considered what purported to be a storage tax upon gasoline, and held that the practical effect of the law in operation was to tax the consumer or user. An excerpt from the opinion of Chief Justice Hughes follows (p. 480):

> Reading together the statutes with respect to gasoline taxes, the state court took the view that as to the gasoline tax with respect to sales within the State, the burden actually rests upon the consumer, although not placed upon the consumer directly. No reason is found to challenge this view. *Texas Company* v. *Brown, supra,* at p. 479; *Panhandle Oil Co.* v. *Knox,* 277 U. S. 218, 222; *Indian Motocycle Co.* v. *United States,* 283 U. S. 570, 579.

Again, in *Stewart Dry Goods Co.* v. *Lewis, supra,* the opinion of this Court cites authorities indicating clearly that a tax and its burden must be considered together (p. 556):

> In *Brown* v. *Maryland,* 12 Wheat. 419, a tax on the occupation of an importer was held a tax on imports obnoxious to the commerce clause. Said the court (p. 444): "It is impossible to conceal from ourselves, that this is varying the form, without varying the substance. * * * All must perceive, that a tax on the sale of an article, imported only for sale, is a tax on the article itself." In *Cook* v. *Pennsylvania,* 97 U. S. 566, a tax on the amount of an auctioneer's sales was declared a tax on the goods sold. In *Crew Levick Co.* v. *Pennsylvania,* 245 U. S.

> 292, a state tax on the business of selling goods in foreign commerce, measured by gross receipts from goods so sold and shipped, was pronounced an impost upon exports. The court said (p. 297): "* * * nor is it an occupation tax except as it is imposed upon the very carrying on of the business of exporting merchandise. It operates to lay a direct burden upon every transaction in commerce by withholding, for the use of the State, a part of every dollar received in such transactions."

Since the mere withdrawal of gasoline can happen repeatedly without a tax accruing, and the obligation of the tax is incurred only upon withdrawal from storage for sale or use, it follows that the withdrawal is merely a necessary and formal incident and that in substance it is the sale or use which is taxed.

In view of the foregoing, it is difficult to reach any other conclusion than that a tax which resembles a sales tax and operates as a sales tax is in fact a sales tax.

Appellants cite *Pan American Petroleum Corp.* v. *Alabama,* 67 F. (2d) 590 (C. C. A. 5th), and *State* v. *City of Montgomery,* 228 Ala. 93, as authority for their position that Alabama statutes impose an occupational tax. The former case holds correctly that certain post exchanges located at Army camps in Alabama were not instrumentalities of the United States Government and therefore were not exempt from the state gasoline tax. Dicta in

the opinion, if intended to mean that the excise tax was not upon the sale but upon the storage of the commodity, was not necessary to the result. Moreover, it is doubtful if Judge Bryan, of the Circuit Court of Appeals for the Fifth Circuit, intended to make the distinction now contended for by counsel for appellants that the State might not tax the sale, but might tax the withdrawal from storage of gasoline, a necessary incident to the sale. The following quotation from the opinion indicates that this distinction was not considered (p. 590):

> We need consider only the tax in respect of sales of gasoline, for it is admitted that if it is collectible, the tax on sales of the other petroleum products is likewise collectible.

The case of *State* v. *City of Montgomery, supra,* held that cities of Alabama were not persons liable for the state excise tax upon gasoline, under the wording of the statute. Accordingly, in 1935, the wording of the statute was changed so that cities would not be exempt.[3] It is submitted that the issue herein was not squarely presented, and anything in the opinion characterizing the tax should be considered as dicta and not controlling.

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[3] It may be noted that the Attorney General's opinion purports to change the effect and operation of statutes after a contrary interpretation and application for many years, although no substantial change was made in the language of the statutes. Had there been any intention to change the application and effect of the law, it is believed the legislature would have manifested such intention in clear and unequivocal language.

We think the court below properly considered the question concerning the immunity of the United States as controlling.

IV

THE TAX WOULD RETARD, IMPEDE, AND BURDEN THE UNITED STATES IN THE EXERCISE OF ITS CONSTITUTIONAL POWERS

Although, in our opinion, the Alabama tax operates as a sales tax, we submit that in determining whether a state tax constitutes an encroachment upon the sovereignty of the United States, it is immaterial whether the tax is a sales tax, an occupational tax or a property tax. The real question is whether the collection of the tax would retard, impede, or burden the United States in the exercise of its constitutional powers.

Counsel do not deny that a sales tax would be invalid with respect to gasoline sold to the United States. Nor is it to be denied that upon expiration of present contracts, the cost of gasoline to the United States will be increased by the amount of the tax if exemption is not allowed.

The jealous care with which the principle of mutual independence and non-interference between the States and the Federal Government is safeguarded, is well illustrated in *Gillespie* v. *Oklahoma*, 257 U. S. 501. The question there concerned the right of the State to tax income from leases of Indian lands. It was held that the leases were instrumentalities of the United States and that the tax would hamper the effort of the Federal Gov-

ernment to make the best possible terms for its wards.

The converse of that case is found in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, in which the Federal Government was denied the right to tax income from leases by the State of Oklahoma of land held by the State for the support of its schools.

Judge Hutcheson, in his dissenting opinion below, notes the purposes for which state gasoline excise taxes are levied. Surely, if the United States is entitled to exemption, the fact that the State uses its gasoline taxes for highways and schools cannot validate an invalid tax. He comments upon the possibility that some of the agencies of the United States might not be exercising purely governmental functions. We think these matters are irrelevant to the determination of the present proceeding. Presumably, gasoline purchased by the United States is for its use in the exercise of its constitutional powers.

Certain interstate commerce cases may be mentioned as having some analogy to the question involved herein. In 1910, three interstate commerce cases were decided: *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1 *Pullman Co.* v. *Kansas*, 216 U. S. 56 and *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146, which cases settled the doctrine that a state tax on a proper subject may nevertheless be an encroachment on Federal authority. Justice Harlan said, in *Western Union Telegraph Co.* v. *Kansas, supra* (p. 27):

> But the disavowal by the State of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things.

Some later cases which may be noted are *Monamotor Oil Co.* v. *Johnson,* 292 U. S. 86; *Edelman* v. *Boeing Air Transp.,* 289 U. S. 249; *Helson & Randolph* v. *Kentucky,* 279 U. S. 245; *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249. A distinction in the application of the rule in those cases and in the instant case is, as stated by Justice Holmes in *Gillespie* v. *Oklahoma, supra* (p. 505):

> The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce cannot be avoided if the States are to exist and make laws. (Citing cases.) The rule as to instrumentalities of the United States on the other hand is absolute in form and at least stricter in substance.

The suggestion by appellants that the United States might be able to avoid payment of the tax by purchasing gasoline which has not been stored and withdrawn from storage in the State is beside the point. While it is true that the Government might do so if the tax were levied by this State alone, in the event other States should follow the lead of Alabama, it would be impossible to avoid the burden of the tax. Moreover, it is maintained that the Federal Government cannot be required to devise schemes which are inconvenient and burdensome in order to avoid payment of a tax levied for the benefit of a State.

CONCLUSION

We submit that the decree below should be affirmed, upon the ground that the effect of imposing and collecting the Alabama excise tax with respect to gasoline sold to the United States would be to impose a burden upon the Federal Government in the exercise of its sovereign powers.

Respectfully submitted.

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APRIL 1936.

APPENDIX

General Acts of Alabama of 1927, p. 16:

Be it enacted by the Legislature of Alabama, That:

* * * * *

SECTION 2. Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once.

SECTION 3. The excise tax imposed by section two hereof shall apply to persons, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use; provided, that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

* * * * *

Approved Jan. 25, 1927.

General Acts of Alabama of 1927, p. 326:

Be it enacted by the Legislature of Alabama:

* * * * *

SECTION 3. (a) That Section 2 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once. (b) The excise tax imposed by subdivision (a) of this section shall apply to persions, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use—provided, that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

* * * * *

Approved August 27, 1927.

General Acts of Alabama of 1931, p. 859:

Be it enacted by the legislature of Alabama:

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SECTION 2–A. Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of one cent per gallon in addition to all other excise tax now imposed by law upon the selling, distributing or withdrawing from storage for any use, gasoline as herein defined in this State; said one cent excise tax shall be collected as now provided by law for the collection of gasoline excise tax and when collected, less the expense of collecting, shall be paid into the State Treasury to the credit of the State Highway Department for the purposes set forth in this Act until October 1, 1932, after which time the same when collected shall be paid to the County Treasurer or the depository of the several counties in equal shares for a period of three years, to be used exclusively by said counties in constructing and maintenance of public roads and bridges within the several counties. Where the excise tax herein provided shall have been paid by a distributor or retail dealer or storer, such payment shall be sufficient, the intention being that the tax levied by this Act shall not be paid but once. Provided, however, that at the end of three years period provided for herein for said excise tax to be paid to the counties said excise tax shall thereafter be no longer collected * * *.

* * * * *

Approved July 27, 1931.

General Acts of Alabama, extra session, 1932, p. 57:

Be it enacted by the Legislature of Alabama:

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SECTION 6. ISSUANCE OF LICENSE AND POWER TO REVOKE SAME; NONTRANSFERABILITY OF LICENSE.—Upon approval of the bond required, as hereinbefore provided, the State Tax Commission shall issue a license authorizing the distributor to engage in the business of selling, distributing and withdrawing from storage, gasoline, but said license may be revoked by the State Tax Commission at any time upon ten days' written notice to the distributor if the distributor shall fail to comply with any of the provisions of this Act, or to pay within the time required by law all excise taxes and penalties required to be paid by such distributor. The license herein authorized to be issued shall be a personal privilege, and shall not be transferable.

SECTION 7. PENALTIES.—Any person who shall engage in the business, for which a license is herein provided, without having a license as herein required, shall forfeit all right to sell, distribute, or withdraw from storage, gasoline in the State of Alabama for a period of one year. Each person engaging in the business of selling, distributing or withdrawing from storage gasoline without first obtaining and having a license therefor as herein required shall be guilty of a misdemeanor, and upon conviction, be fined not less than two hundred fifty or more than five hundred dollars, or imprisoned for a term of not less than thirty or more than one hun-

dred eighty days, or both, at the discretion of the Court.

* * * * *

Approved October 5, 1932.

General Acts of Alabama of 1932, p. 314:

Be it enacted by the Legislature of Alabama:

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SECTION 2. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of one cent (1¢) per gallon upon the selling, distributing, or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of one cent (1¢) per gallon upon the sale of such gasoline shall have been paid by the distributor, refiner, or by retail dealer or storer such payment shall be sufficient, the intention being that the tax shall be paid but once.

SECTION 3. The excise tax imposed by Section 2 hereof shall apply to persons, firms, corporations, dealers, refiners or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided, that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

* * * * *

Approved November 5, 1932.

An act adopted by the Legislature of Alabama in 1935, approved January 31, 1935:

Be it enacted by the Legislature of Alabama:

* * * * *

SECTION 2. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents (2¢) per gallon upon the selling, distributing, or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents (2¢) per gallon upon the sale of such gasoline shall have been paid by the distributor, refiner, or by retail dealer or storer such payment shall be sufficient, the intention being that the tax shall be paid but once.

SECTION 3. The excise tax imposed by Section 2 hereof shall apply to persons, firms, corporations, dealers, refiners, or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

* * * * *

SECTION 19. That the levy of the one cent tax as provided and levied under the provisions of an act * * *. Approved July 27, 1931," be and the same is hereby sus-

pended as of and on February 1, 1935, and all other provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said act is hereby repealed. That the levy of the one cent tax as provided and levied under the provisions of an act * * *. Approved November 5, 1932", be and the same is hereby suspended as of and on February 1, 1935, and all other provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said Act is hereby repealed.

* * * * *

Approved January 31, 1935.

Pertinent schedules of section 348 of the Revenue Act of 1935 adopted by the Legislature of Alabama and approved July 10, 1935:

SCHEDULE 156. As used in this Chapter, the term "gasoline" shall include gasoline, naptha and other liquid motor fuels or any device or substitute therefor, commonly used in internal combustion engines; provided, however, that nothing in this Chapter shall be held to apply to those products known commercially as "kerosene oil", "fuel oil", or "crude oil" commonly used for lighting, heating, or industrial purposes. The word "person" means and includes persons, corporations, co-partnerships, companies, counties, municipal corporations, school boards, or agencies of the State, or other agencies, associations, incorporated or otherwise, singular or plural. The term "distributor" shall include any person who engages in the selling of gasoline in this State by wholesale

domestic trade, but shall not apply to any transaction of such distributor in interstate commerce. The word "refiner" shall include any person who manufactures, distills, blends, compounds or mixes any one or more products in the production of a liquid motor fuel as herein defined. The term "retail dealer" shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities. The term "storer" as herein used shall include any person who ships or causes to be shipped or received, gasoline into this State in any quantities, and stores the same in any manner and withdraws or uses the same for any purpose.

SCHEDULE 156.1. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of six cents ($0.06) per gallon upon the selling, distributing, storing or withdrawing from storage in this State for any use, gasoline as herein defined, provided, however, that this excise tax shall not be levied on the sale of gasoline in interstate commerce, and provided further, that where the excise tax of six cents ($0.06) per gallon upon the sale, distribution, storage or withdrawal from storage of such gasoline shall have been paid by a distributor, refiner, or by retail dealer or storer, such payment shall be sufficient, the intention being that the tax shall be paid but once.

SCHEDULE 156.2. The excise tax imposed by Section 156.1 hereof shall apply to persons as defined in this Chapter, storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or

other use; provided that "sellers" of gasoline and its substitute paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

SCHEDULE 156.3. On or before the twentieth day of each month after this Chapter shall have taken effect, every person upon whom this excise tax is levied, shall render to the State Tax Commission on forms prescribed by such Commission, a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding calendar month, and shall furnish the said Commission such other information as such Commission may demand and/or require, upon blanks to be formulated and furnished by said Commission, and at the time of making such monthly report shall pay to the State Tax Commission an amount of money equal to the excise tax herein levied.

* * * * *

SCHEDULE 156.9. One-third of the proceeds of the excise tax herein imposed, less cost of collection and administering this Chapter, shall be paid into the State Treasury to the credit of the sixty-seven counties of the State, and shall be divided and distributed equally among the sixty-seven counties of this State, payment to be made by State warrant to be mailed to the Treasurer of such counties or depositories of such counties, on or before the 10th day of each month following collection. Such funds when received by the County Treasurer shall be covered into the County road and bridge fund, and shall be expended exclusively in

the construction, maintenance and repair of the public roads and bridges in such County. * * *.

SCHEDULE 156.10. One-third of the proceeds of the excise tax herein imposed, when collected, shall be covered into the State Treasury to the credit of the public road and bridge fund. * * *.

SCHEDULE 156.11. One-third of the excise tax herein imposed, when collected, shall be divided, monthly as collected, less the cost of collection, as follows: One half of said ⅓ shall be paid into the State Treasury to the credit of the State Highway Department for the public road and bridge fund, * * *; and the other one half of said ⅓ shall be divided equally among the 67 counties of the State of Alabama, monthly as collected, less the cost of collection, payment to be made to the County Treasurer or Depository of said counties on or before the 10th day of each month of the year, * * *.

* * * * * *

SCHEDULE 156.14. If any distributor, refiner, storer or retail dealer in gasoline covered by this Chapter shall fail to make the monthly returns prescribed herein and pay the excise tax hereby laid, on or before the 20th day of the month following sale, distribution or withdrawal, the State Tax Commission shall make return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return and pay the tax herein laid of twenty-five per cent (25%) of the tax due, to the amount as assessed by the Commission. If, in the opinion of the State Tax Commission, a good and sufficient cause or reason is shown for such delinquency, the

State Tax Commission may remit the penalty, otherwise the penalty shall be paid.

* * * * *

SCHEDULE 156.20. All laws and parts of laws in conflict with the provisions of this Chapter are hereby repealed, provided that nothing in this Chapter shall be held or construed to repeal any part of Act 55, approved October 5th, 1932, Acts, Special Session, 1932, page 57. Provided further that nothing herein contained shall be held or construed to repeal any law heretofore enacted providing for the collection of excise tax on the sale, distribution or withdrawal of gasoline from storage in this State until all such taxes accrued prior to the effective date of this Chapter shall have been collected.

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